



The Purchasing Memo

Date: May 27, 2025

To: Governing Body, Finance Committee, and Public Works Committee

From: P. Fred Heerbrandt, P.E., Engineer Supervisor P. Fred Heerbrandt, P.E.  
P. Fred Heerbrandt, P.E. (May 27, 2025 10:14 MDT)

Via: Jesse Roach, Interim Utilities Director *JR*

Subject: AAC Construction, LLC On Call Contract Amendment 1

Vendor Name: AAC Construction, LLC

Munis Vendor Number: 7958

ITEM AND ISSUE:

The Public Utilities Department respectfully requests your review and approval of a Contract Amendment #1 to General Services Contract # 3204545 with A.A.C. Construction, LLC for On Call Mechanical Construction. Amendment #1 increases the amount of compensation, to continue funding the contract through its term, by \$1,000,000.00, for a total compensation of \$3,000,000.00, including NMGRT.

Request for Approval of a Budget Amendment Resolution (BAR) in the Total Amount of \$1,000,000 from Wastewater Enterprise Fund to WIP Construction to Fund a Contract with AAC Construction.

CONTRACT NUMBER:

The FY25 Munis contract number is 3204545.

BACKGROUND AND SUMMARY:

Funds were expended ahead of schedule in this contract to address ongoing compliance issues at the facility. Additional funds are needed so that we will have funding available in this contract to proceed with additional maintenance items in the last two years of this contract term.

PRIOR APPROVALS AND SUPPORTING INFORMATION:

FUNDING SOURCE:

Fund Name/Number: Enterprise Fund 500

Munis Org Name/Number: Wastewater Capital Projects/5000375

Munis Object Name/Number: WIP Construction/572970


Budget Officer / Designee: Andy Hopkins Date: 06/09/2025

Budget Officer Comment/Exceptions: \_\_\_\_\_

PROCUREMENT METHOD:

The procurement method used was NMSA 1978, Section 13-1-102, ITB

Following ITB 24/05/B a four-year contract was awarded to AAC Construction, LLC. The contract had a four-year term and total compensation of \$2,000,000.00. The contract expires June 30, 2027. Amendment #1 requests an additional \$1,000,000.00 in compensation to fund the contract for the remaining two years of its term.

Chief Procurement Officer (CPO)/Designee:  Date: 06/09/2025

CPO Comment/Exceptions: \_\_\_\_\_

**ASSOCIATED APPROVALS:**

IT Components included?  Yes |  No

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Comment/Exceptions: \_\_\_\_\_

Treasury/Point of Sale Components included?  Yes |  No

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Comment/Exceptions: \_\_\_\_\_

Vehicles included?  Yes |  No

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Comment/Exceptions: \_\_\_\_\_

Construction to City Facilities, Furniture, and/or Fixtures included?  Yes |  No

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Comment/Exceptions: \_\_\_\_\_

Is this an externally funded purchase?  Yes |  No

If yes, what is the issuing agency: \_\_\_\_\_

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Comment/Exceptions: \_\_\_\_\_

Is this a Capital Asset or Project?  Yes |  No

Project Ledger Number: \_\_\_\_\_

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Comment/Exceptions: \_\_\_\_\_

**ATTACHMENTS:**

- Certificate of Liability Insurance (COI)
- General Services Contract Amendment
- Original contract packet

BAR

**CITY OF SANTA FE  
AMENDMENT No. 1 TO  
GENERAL SERVICES CONTRACT  
ITEM# 24-0009**

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE GENERAL SERVICES CONTRACT, dated January 11, 2024 (the "Contract"), between the City of Santa Fe (the "City") and A.A.C. Construction, LLC, (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

**RECITALS:**

A. Under the terms of the Contract, Contractor has agreed to provide the City with on-call mechanical construction services.

B. Pursuant to Article 9 of the Contract, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. COMPENSATION.

Article 4, of the Contract is amended to increase the amount of compensation by a total of one million dollars (\$1,000,000.00) so that Article 4, reads in its entirety as follows:

The City shall pay to the Contractor based upon fixed labor rates as listed in Appendix A. The total compensation under this Agreement shall not exceed \$3,000,000.00 including New Mexico gross receipts tax.

B. CONTRACT IN FULL FORCE.

Except as specifically provided in this Amendment, the Contract remains and shall remain in full force and


effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Contract as of the dates set forth below.

CITY OF SANTA FE:

CONTRACTOR:  
A.A.C. Construction, LLC

\_\_\_\_\_  
Alan Webber, MAYOR

  
[Andrew Sisneros \(May 25, 2025 10:28 MDT\)](#)  
\_\_\_\_\_  
Andrew Sisneros, Managing Member

DATE: \_\_\_\_\_

DATE: 05/25/2025  
CRS#03-157349-00-5

Registration # 222939

ATTEST:

\_\_\_\_\_  
CITY CLERK

CITY ATTORNEY’S OFFICE:

Marcos Martinez  
[Marcos Martinez \(May 22, 2025 10:26 MDT\)](#)  
\_\_\_\_\_  
SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

*Emily K. Oster* 06/12/2025  
\_\_\_\_\_  
FINANCE DIRECTOR

CITY OF SANTA FE  
PURCHASING OFFICE  
200 Lincoln Ave Room 122 Santa Fe, NM 87505  
Travis Dutton-Leyda, CPO

<b>DATE: 09/21/2023</b>							
<b>BID NUMBER: 24/05/B</b>							
<b>PREPARED BY: Kathy Sanchez</b>							
<b>Item</b>	<b>Approx.Qty.</b>	<b>UOM</b>	<b>Article and Description</b>	<b>Vendor</b>	<b>Vendor</b>	<b>Vendor</b>	<b>Vendor</b>
				<b>A.A.C.</b>	<b>All-Rite/RiteCon</b>	<b>AnchorBuilt</b>	<b>McDowell Mechanical</b>
<b>Wage Rates for Projects Under \$60,000</b>							
1	1	HR	Superintendent - Regular Hourly Rate	\$225.00	\$85.00	\$100.00	\$95.00
2	1	HR	Superintendant - Overtime Hourly Rate	\$337.50	\$85.00	\$150.00	\$142.50
3	1	HR	Journeyman or Experienced Worker - Regular Hourly Rate	\$125.00	\$85.00	\$95.00	\$65.00
4	1	HR	Journeyman or Experienced Worker - Overtime Hourly Rate	\$187.50	\$85.00	\$142.50	\$100.00
5	1	HR	Laborer - Regular Hourly Rate	\$95.00	\$75.00	\$65.00	\$35.00
6	1	HR	Laborer - Overtime Hourly Rate	\$142.50	\$75.00	\$97.50	\$50.00
<b>Wage Rates for Projects Over \$60,000</b>							
7	1	HR	Superintendent - Regular Hourly Rate	\$235.00	\$85.00	\$105.00	\$125.00
8	1	HR	Superintendant - Overtime Hourly Rate	\$352.50	\$85.00	\$155.00	\$187.50
9	1	HR	Journeyman or Experienced Worker - Regular Hourly Rate	\$135.00	\$85.00	\$100.00	\$85.00
10	1	HR	Journeyman or Experienced Worker - Overtime Hourly Rate	\$202.50	\$85.00	\$150.00	\$125.00
11	1	HR	Laborer - Regular Hourly Rate	\$105.00	\$85.00	\$75.00	\$55.00
12	1	HR	Laborer - Overtime Hourly Rate	\$157.50	\$85.00	\$112.50	\$75.00
<b>Misc. Rates</b>							
13	1	Disc.	Discount off all materials. Enter zero if no discount	0%	0%	0%	0%
14	1	Daily	Temporary Site office trailer, rental rate	\$150.00	\$100.00	\$15 (\$450/Month)	\$450.00
15	1	Daily	Temporary fencing, rental rate	\$5,000.00	\$100.00	\$16.75 UOM=100ft (\$500/Month)	\$250.00
16	1	Dialy	Sanitary/toilet facilities, rental rates	\$500.00	\$20.00	\$6.75	\$25.00



**From:** [DUTTON-LEYDA, TRAVIS K.](#)  
**To:** [HEERBRANDT, PAUL E.](#); [Purchasing DET](#)  
**Subject:** RE: On-Call Construction contract for the Wastewater Management Division - 23-66-B  
**Date:** Friday, March 24, 2023 4:58:19 PM  
**Attachments:** [image002.png](#)

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Greetings,

The scope of work as written is GENERAL SERVICES. Please note this determination relates only to that question and is no comment on whether the scope of work or procurement method meet all legal standards. I reserve the right to change this determination if the scope of work differs from the scope of work submitted for the original determination. This procurement must be conducted using the processes and procedures set forth by the City of Santa Fe, Central Purchasing, and the Procurement Manual.

- While this scope of work has been determined to be general services, please check with Horizons. The scope of work must be offered to Horizons for their right of first refusal.
- Please ensure that the appropriate templates and forms are used.
- When processing this procurement, please ensure that this number (23-66-B) and the procurement name are used in the appropriate documents and the subject of emails.
- Please keep this as part of the procurement file for future reference.
- Figure out your funding source. To ensure that the proper documents and language are used, it is important to identify the funding source for the subsequent agreement. For instance, if federal funds are involved, the procurement request and subsequent contract must include the necessary federal language. Therefore, it is crucial to determine the funding source beforehand.
- Please review the [Statewide Price Agreements](#) page to determine whether any of the agreements are applicable to this request.

Thank you for submitting this scope of work for review.

Regards,

Travis Dutton-Leyda – CPO  
Purchasing Officer  
City of Santa Fe  
200 Lincoln Avenue  
Santa Fe, NM 87501  
505-629-8351  
[tkduttonleyda@santafenm.gov](mailto:tkduttonleyda@santafenm.gov)

<https://santafenm.gov/finance-2/purchasing-1>



P.s.,

1. Scope of Work.

A. The Contractor shall perform the following work:

1) The City of Santa Fe Public Utilities Department , Wastewater Management Division is seeking an On-call Price Agreement for the repair, replacement, modification, and rehabilitation of equipment and facilities at Paseo Real Wastewater Reclamation Facility and work related to those systems. This procurement will be based on a vendor supplying pricing through an established cost schedule (attached). The price agreement will contain the contractor's commitment to offer services and willingness to respond 'on-call 'to the requests when such requests are originated and authorized by the City of Santa Fe.

The work under this contract is located in the City of Santa Fe at 73 Paseo Real. The scope of work consists of furnishing all mobilization, labor, material, equipment and services, unless otherwise specified, for on-call emergency service and for routine work for the City of Santa Fe Wastewater Reclamation Facility and appurtenances. Work to include repair, replacement, modification and rehabilitation of equipment and facilities include trenching, excavation, backfill and compaction at excavation site, installation of mechanical equipment, valving, or piping, and repair of various equipment.

B. The Work to include repair, replacement, modification and rehabilitation of equipment and facilities and other work issued by a Work Order includes, but is not limited to the following:

1. Installation of all specified equipment, valves, piping, etc.
2. Earthwork, grading and compaction for restoring the driving surface over disturbed areas.
3. Coordination with the WWMD Maintenance and Operational staff
8. Any other related work associated with this work, as drawn and specified in the WO.
9. Provide all required materials not provided by the WWMD.
10. Provide 12 month Contractor's warranty on installation of equipment, parts and labor, as well as warranties on equipment provided by the Contractor.

C. The Contractor shall be responsible for adherence to the Contract Documents, Work Orders, Specifications and approved directives and Change Orders:

The Contractor shall be responsible for State CID requirements and permit.

The Contractor shall be responsible for verifications of all existing conditions, measurements and dimensions before signing each WO.

The Contractor shall be responsible for all permits, fees, and State and/or City inspections associated with the construction.

D. The Contractor shall perform all the work required by the Wastewater Management Division, as required, on each Work Order (WO) in the Contract Documents (attached) for the City of Santa Fe Public Utilities Department, Wastewater Management Division On-call repair, replacement, modification, and rehabilitation of equipment and facilities at Paseo Real Wastewater Reclamation Facility Price Agreement.

E. The Contractor shall be responsible for verifications of all measurements and dimensions for bidding on each subsequent Work Order.

F. The Contractor shall provide and keep at the work site, a complete "as-built" record set of drawings that shall be corrected daily and shall show every change from the original approved drawings and specifications. These changes shall be forwarded to City periodically. The drawings shall reflect exact and actual "as-built" conditions of construction, installation, and erection as it progresses. Where drawings are not adequate to show "as-built" conditions, Contractor shall prepare sketches which delineate the necessary "as-built" information. City shall furnish two (2) sets of all paper "blue-line" print "approved" drawings for use in accomplishing specified mark-up. Final "as-built" drawings shall be delivered to City by Contractor upon completion of the work.

G. The Contractor shall be responsible for maintaining safe practices at the site in conformance with Federal, State and Local regulations.

H. The Contractor shall be responsible for all permits, fees, and State and City inspections associated with the construction.

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**From:** HEERBRANDT, PAUL F. <pfheerbrandt@santafenm.gov>

**Sent:** Wednesday, March 22, 2023 12:40 PM

**To:** Purchasing DET <purchasing\_det@santafenm.gov>

**Subject:** On-Call Construction contract for the Wastewater Management Division

I have attached a draft Scope of Work for a determination.

Thanks

Fred

P. Fred Heerbrandt, P.E.

Engineer Supervisor Wastewater

City of Santa Fe

505-955-4623

[pfheerbrandt@santafenm.gov](mailto:pfheerbrandt@santafenm.gov)

CITY LOGO - Copy





## DESCRIPTIONS (Continued from Page 1)

Liability policy contains a special endorsement with "Primary and Noncontributory" wording, when required by written contract.

RE: On-Call Contract.

Additional Insured includes: City of Santa Fe their officials, officers, employees, and agents.

Item# 24-0009  
Munis Contract# \_\_\_\_\_  
ITB # 24/05/B

**CITY OF SANTA FE  
GENERAL SERVICES CONTRACT**

**On-Call General/Mechanical Construction Services**

THIS Price Agreement is made and entered into by and between the City of Santa Fe, herein after referred to as the "City", and A.A.C Construction, LLC herein after referred to as the "Contractor."

**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

**1. Definitions**

**A. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.**

**B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.**

**C. "Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.**

**2. Scope of Work**

**A. The Contractor shall perform the following work:**

The City of Santa Fe, Public Utilities Department, Wastewater Management Division (Wastewater) will establish a Price Agreement for on-call General and Mechanical Construction services work by New Mexico licensed contractors to provide miscellaneous repairs, upgrades, improvements, replacements, new construction services and material for facilities and processes throughout the Paseo Real Wastewater Reclamation Facility, the Sanitary Sewer Collection System, and other remote locations.

Wastewater shall provide, at a minimum, a detailed scope of work and/or drawings, generally defining the construction work required for the project. The Contractor shall be responsible for verifications of all existing conditions, measurements, and dimensions for bidding.

This Agreement is without assurance of quantity or dollar amount of work to be performed.

The Contractor shall perform diagnostic services and provide professionally prepared, stamped drawings, if needed, to obtain installation or construction permits.

Wastewater shall be able to utilize this On-Call Agreement as needed and as funding is available.

**B. Other:**

All work shall be in strict compliance with the national and state building mechanical, plumbing and electrical codes including SMACNA, and ASHRAE standards and in accordance with applicable City and state laws, the International Building Code (IBC) and the New Mexico building codes. The Contractor shall be responsible for all permits associated with this work as required by the governmental Authority Having Jurisdiction (AHJ).

Contractors shall be capable of providing all coordination, supervision and services required for comprehensive general construction, equipment replacement, upgrade and improvement projects and to provide new construction services including incidental design. The scope of an individual project may include equipment and fixtures whether attached or not to the building. It can include site and utility work, mechanical work, pavement restoration, building repair, renovation, painting, stucco, backfill services, digging, ditching, rock stabilization, concrete, and pour in place and form place finish. The utility work shall include building power systems such as solar panels, and piping and pumping systems, and waste treatment systems. It may also include demolition and abatement projects.

Wastewater reserves the right to procure specialty services directly from Statewide Price Agreements and other sources and shall be coordinated by the Contractor.

Wastewater reserves the right to obtain quotes from multiple vendors covered under this Agreement and award a project to a contractor based on the quotes.

Wastewater reserves the right to provide an escort and/or full-time supervision of the Contractor and its employees during any or all phases of a project, should Wastewater feel it is in its best interest to provide these extraordinary security services.

Wastewater reserves the right to escort any or all employees of the Contractor off its property, for any inappropriate conduct or actions that jeopardize the safety, security, or wellbeing of the facility or any individual. Inappropriate behavior by the Contractor, its employees or subcontractors may be grounds for immediate removal from this Agreement. Any employee of the Contractor found in violation of any law, while on City property, will be prosecuted.

**C. Contractor:**

Safety shall be of main concern and enforced by the Contractor on site. The Contractor shall comply with all local, state and federal laws governing safety, health and sanitation. The on-site superintendent shall always have a minimum OSHA 10 and preferably OSHA 30 card with them when on the jobsite. The Contractor shall follow the Occupational Safety and Health Act (OSHA) 29 CFR 1910.147 Standard pertaining to "Lockout/Tagout" procedures for hazardous energy.

Wastewater shall not in any way be responsible for any fines set forth for such violations of codes, OSHA standards or any other governing agency having jurisdiction at the work site. The Contractor shall provide all needed safeguards, safety devices, protective equipment and take any actions necessary to protect the life and health of employees on the job; the safety of the public and to protect the property in connection with the performance of the work covered by this Agreement.

All personnel working on the project and providing these services shall be experienced and certified in all areas related to this work and required by this Agreement. Journeymen level personnel shall have the ability and necessary skills to diagnose problems and to make the appropriate decisions needed to provide these services.

The Contractor shall agree to provide required labor within 24 hours for emergency situations.

Subcontracting of work is allowed and shall have prior approval by Wastewater. Subcontractors shall have the appropriate current valid Contractor's licenses for their work. Proof of licenses shall be furnished upon request.

There will be NO markups allowed for adding subcontractor costs or to cover general conditions (administrative costs and other related expenses) allowed on any of the quotes issued pursuant to this Agreement. If a subcontractor is hired for the project the reimbursement must be at actual cost of the subcontractor's cost. The cost of the subcontractor will be added at time of invoicing as a separate item to be paid by the department.

The Contractor shall provide all protective coverings necessary to protect existing, adjacent finishes while performing its work. If any damage is encountered during the contractor's work, the contractor will be held responsible for repairing any damage done by his employees, subcontractors, and vendors. The Contractor shall restore any damage to existing and/or adjacent finishes damaged while performing work and to make new work inconspicuous with the existing adjacent finishes.

The Contractor and its employees agree to cooperate with and to abide by the rules and requirements of Wastewater to not interfere with the daily operations or to jeopardize the health, safety or welfare of the employees or general public conducting business with Wastewater.

**D. Bonding:**

A one hundred percent (100%) performance bond and a one hundred percent (100%) payment and material bond executed by a surety company authorized to do business in the State of New Mexico will be required of the Contractor prior to each project over twenty-five thousand dollars (\$25,000). Said bonds must be provided to Wastewater within ten (10) days of the request for the bonds. Failure to comply shall result in the order being issued to another vendor and the difference in the cost being charged back to the awarded Contractor.

**E. Clean Up and Storage:**

1) The Contractor will provide off-site legal disposal of all waste products, trash, and debris. Wastewater's trash receptacles will not be used by the Contractor. Sanitary facilities will "not" be available at the job site. Contractor shall be responsible for the provision and maintenance of portable toilets.

2) The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Contractor shall remove the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials and shall then thoroughly clean the premises and the site to Wastewater's satisfaction.

3) Materials or equipment shall be delivered to the project in the manufacturer's original sealed, labeled containers and shall be adequately protected against moisture, dust, tampering or damage from improper handling or storage. Materials shall not be delivered to the site before they are needed.

4) Storage of materials and construction equipment shall be coordinated with Wastewater.

**F. Task Order:**

The Contractor shall be required to provide On-Call General Construction Services for any number of the activities listed under Scope of Work upon the request of Wastewater. When a service is identified, Wastewater shall provide, at a minimum, a detailed scope of work and/or drawings defining work required. Each project will be individually described in a "Task Order". The Task Order will describe the scope of work, the duration of the project with the date of Substantial Completion and if there are liquidated damages for not meeting the date of substantial completion. The date of Substantial Completion is the date when the space can be occupied or the Work used/operated and is turned over to Wastewater. Final completion is the date when the project is totally complete, the punch list work complete and the Contractor's final pay application/invoice is approved. The terms and conditions of the Contractor's Agreement will apply to all Task Orders.

Upon receiving the Task Order, the Contractor shall promptly visit the site and compare Wastewater's scope of work and/or drawings to the existing conditions and provide all services called for in addition to the requirements set forth in this Agreement. The Contractor will be required to provide a written quote (based upon the rates submitted in the Bid Form) and cost summary to include the work to be performed and the amount of time required for the completion of the project and submit to Wastewater at no cost to Wastewater. Project schedules, negotiated price, and completion dates shall be determined on a project-by-project basis and dependent upon the urgency of that task.

If any equipment or system cannot be economically repaired or has reached the end of its life cycle, the Contractor shall justify with costs and other information they need for replacement. If replacement is recommended, the Contractor will provide written justification for system and/or the model, size, and type of unit recommended along with any applicable efficiency data. Wastewater's standards will be discussed and taken into consideration when proposing

replacement units or systems. Any replacement unit shall be reviewed and approved by the requesting entity.

**G. Change Orders:**

Any change orders to the project scope will require an additional Task Order with backup materials and labor costs and shall be substantiated that there was no way of knowing the additional services were needed when the original quote was provided. Change orders shall be managed closely by Wastewater. Preventative measures shall be taken by both the contractor and Wastewater prior to issuing the Notice to Proceed. Such measures may include soil tests (soil boring); clarification of ambiguity in the project plan, the scope of work, the Task Order, the drawings, etc.; the project scope should be completely defined and agreed upon before any work begins.

**3. Other Construction Related Terms and Conditions**

**A. Mediation:**

Any controversy or claim arising between the parties shall be settled by mediation if the parties cannot reach a mutually agreeable solution. The parties shall endeavor to resolve their disagreement by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the procedures of the New Mexico Public Works Mediation Act (NMSA §13-4C-1 et seq.) except that before any party may select a mediator it must confer in good faith with the other party concerning the selection of a mutually acceptable mediator. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of notice of mediation session, unless stayed for a longer period by agreement of the parties or court order.

**B. Inspection of Work:**

If a Purchase Order is issued for the purchase of services, the following terms shall apply when applicable:

- 1) Services include services performed, workmanship, and material furnished or utilized in the performance of services.
- 2) The Contractor shall provide and maintain an inspection system acceptable to Wastewater covering the services under the Purchase Order. Complete records of all inspection work performed by the Contractor shall be maintained and made available to Wastewater during the term of performance of the Work and for as long thereafter as required.
- 3) Wastewater has the right to inspect and test all services contemplated to the extent practicable at all times and places during the term of the Project. Wastewater shall perform inspections and tests in a manner that will not unduly delay or interfere with the Contractor's performance.
- 4) If Wastewater performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at

no increase in Purchase Order price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

- 5) If any part of the services does not conform with the requirements, Wastewater may require the Contractor to re-perform the services in conformity with the requirements at no increase in Purchase Order amount. When the defects in services cannot be corrected by re-performance, Wastewater may:
  - i. require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements; and
  - ii. reduce the Purchase Order price to reflect the reduced value of the services performed.
- 6) If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements, Wastewater may:
  - i. by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by Wastewater that is directly related to the performance of such service; or
  - ii. cancel the Purchase Order for default.

**THE PROVISIONS OF THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THE PURCHASE ORDER/PRICE AGREEMENT.**

**C. Suspension, Delay or Interruption of Work:**

Wastewater may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period as Wastewater may determine. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized.

If at any time there is a delay in the critical path of the Work due to postponement, due to the Contractor's efforts to justify an extension of the time or an increase in the Agreement price beyond the deadlines or due to the Contractor's refusal to proceed with any of the approved work, such delay and any Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Agreement Completion Date or for an increase in the Agreement price.

**D. Permits and Fees:**

1) IF APPLICABLE- The Contractor shall secure and pay for the Building Permit and other permits and governmental fees, licenses and inspections and Certificate of Occupancy necessary for proper execution and completion of the Work. Changes or modifications to the Work shall include all requirements of this paragraph.

2) The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

3) IF APPLICABLE- Certificates of Inspection, use and occupancy will be delivered to Wastewater upon completion of the work in sufficient time for occupation of the facility in accordance with the approved schedule for the work. Contractor shall deliver a photocopy of the Building Permit to the Design Professional and Wastewater as soon as it is obtained.

**E. Schedule, Progress Meetings and Reports:**

1) The Contractor, promptly after being awarded a Project and before the first payment application, shall prepare and submit for Wastewater's information a Critical Path Construction Schedule for the work that indicates the intended start and completion of the various construction activities, which shall be implemented and adhered to by the Contractor, Subcontractors, material suppliers and equipment suppliers. At a minimum, the schedule shall be a GANTT type schedule and shall not exceed time limits allowed by the Task Order or Notice to Proceed with no fewer work breakdown events than line items of the Schedule of Values.

2) The Contractor shall perform the work in general accordance with the most recent schedule submitted to Wastewater.

3) Progress meetings shall be scheduled on a regular basis. The purpose will be to review the upcoming activities, any open issues and current progress. The Contractor shall keep any meeting minutes as needed. Progress schedules shall be updated regularly. A three-week look-ahead schedule should be presented at every project meeting. A new schedule shall be presented with any change orders.

4) The Contractor shall prepare a daily report each day the Contractor, subcontractors or any other entity are on the project. The daily reports shall be maintained at the site and be well organized. Wastewater may request copies at any time. The reports may include:

- i. report date and who prepared the report;
- ii. weather conditions - low temp, visibility, humidity, wind, wind direction, cloud conditions, precipitation amount, other notes;
- iii. companies present by name and their number of workers, work location, total man hours that day for each company;
- iv. equipment-type, source, units of work done, location of work, hour meter reading;
- v. material brought to site-description, units, quantity, quality, location, time;
- vi. visitors to site -name, company, time;
- vii. safety concerns-company, contact, noticed by, work activity, safety issue, requirement, outcome: and
- viii. quality assurance and control -company, description of issue, specification section, issued by.

**F. Close-out Requirements:**

The Contractor shall submit to Wastewater a separate and detailed Closeout Schedule indicating the date of Final Completion and all work to be completed before Final Completion

including Close-Out requirements. The punch list of incomplete or inadequate work shall also be submitted when the work is substantially complete. Failure to include any item on the punch list does not alter the responsibility of the Contractor to complete all work in accordance with the Agreement Documents.

Before final completion can be achieved, all Work must be complete and accepted including the following as applicable:

- 1) Work associated with Punch List(s);
- 2) Testing, balance or performance operations complete and in agreement that associated work is in compliance with the Agreement Documents;
- 3) One hard copy and one electronic copy in .pdf format of final approved test, balance or performance report(s) complete with directory of contents submitted to Wastewater;
- 4) As-Built drawings delivered in AutoCAD or electronic format;
- 5) Written certification signed by Wastewater of delivery and stocking of extra material, equipment or components required by the Purchase Order at a location established by Wastewater;
- 6) Delivery of all warranties required by the work;
- 7) All keys, passes, codes, software or other methods or components of control or security which have been correctly and adequately accounted for and closed-out;
- 8) Start-up of any new equipment and training of staff on all new equipment;
- 9) Operations and Maintenance Manuals;
- 10) A certified statement of Release of Liens (AIA Document G706A or approved form) and Consent of Surety.

#### **G. Warranty:**

The Contractor shall warrant its work (non-roofing and equipment), for materials and for workmanship furnished and performed under this Agreement for a period of one (1) year minimum from the date of acceptance or Substantial Completion. The Contractor shall warrant its work for repairs or restoration of existing systems and work for ninety (90) days from the date of acceptance or Substantial Completion. It is understood that some equipment is far beyond its normal life and a warranty cannot be extended/supplied. Contractor must pass on to Wastewater warranties of replaced roofs and equipment offered by the manufacturer.

#### **H. Materials and Parts:**

Contractor shall submit billings, based on actual Contractor costs for materials, less any applicable percentage for discounts.

Contractor shall provide verification that materials purchased were used for the project. Any unused, billed for materials shall be turned over to Wastewater for which the work was provided.

All material shall be new and of the highest quality available for the type of work being performed. The purchase of major equipment or material must be preceded by submission of

submittal data on the proposed equipment or material and shall be reviewed and approved by Wastewater.

No used materials shall be used on the project. Recycled materials specifically prepared for reuse to meet "LEED" certification may be permitted with Wastewater's approval.

Replacement systems and related equipment shall meet current minimum "Energy Star" energy conservation standards.

Furnishing of submittal data for any/all new equipment and materials as well as O&M's is required. Training of site personnel for the proper operation of newly installed equipment/systems and its related controls will be required for completion. This training will be acceptable to the person in charge of the facility and/or the City's Project manager in charge of the project.

Wastewater reserves the right to purchase materials directly from existing Statewide Price Agreements and other sources, and to provide these materials to the Contractor. The Contractor shall provide an itemized, quantifiable list of materials required for the project.

If the Contractor is requesting reimbursement for materials used on the work, copies of the invoices for the materials must be included when submitting invoices/pay applications. The Contractor may NOT add markups for the materials purchased.

#### **4. Compensation**

The City shall pay to the Contractor based upon fixed labor rates as listed in Appendix A. The total compensation under this Agreement shall not exceed \$2,000,000.00 including New Mexico gross receipts tax.

#### **5. Payment Provisions**

All payments under this Agreement are subject to the following provisions.

**A. Acceptance** - In accordance with Section 13-1-158 NMSA 1978, the City shall determine if the product or services provided meet specifications. Until the products or services have been accepted in writing by the City, the City shall not pay for any products or services. Unless otherwise agreed upon between the City and the Contractor, within thirty (30) days from the date the City receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the City shall issue a written certification (by letter or email) of complete or partial acceptance or rejection of the products or services. Unless the City gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

**B. Payment of Invoice** - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract.

to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The City agrees to pay in full the balance shown on each account's statement, by the due date shown on said statement.

**6. Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE CITY. This Agreement shall begin on the date approved by the City and end on June 30, 2027. The City reserves the right to renew the Agreement on an annual basis by mutual agreement not to exceed a total of four years in accordance with NMSA 1978, §§ 13-1- 150 through 152.

**7. Default and Force Majeure**

The City reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the City, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the City due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the City shall determine that the supplies or services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

**8. Termination**

**A. Grounds.** The City may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the City's uncured, material breach of this Agreement.

**B. Notice; City Opportunity to Cure.**

1) Except as otherwise provided in Paragraphs 8.A and 18, the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2) Contractor shall give City written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the City's material breaches of this Agreement upon which the termination is based and (ii) state what the City must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the City does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the City does not, within the

thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the City; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the City; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

## 9. Amendment

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 8 herein, or to agree to the reduced funding.

## 10. Status of Contractor

The Contractor, and Contractor's agents and employees, are independent Contractors for the City and are not employees of the City. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the City unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

## 11. Assignment

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

**12. Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City.

**13. Non-Collusion**

In signing this Agreement, the Contractor/Contractor certifies the Contractor/Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City.

**14. Inspection of Plant**

The City may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

**15. Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

**16. Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

**17. Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the City, the State Auditor and other appropriate state and federal authorities. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

**18. Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the City Council for the performance of this

Agreement. If sufficient appropriations and authorization are not made by the legislature, this Agreement, and any orders placed under it, shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**19. Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**20. Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the City.

**21. Conflict of Interest**

**A.** The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

**B.** The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

**C.** Contractor's representations and warranties in Paragraphs A and B of this Paragraph are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this section.

**22. Approval of Contractor Representative(s)**

The City reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the City, adequately serving the needs of the City.

**23. Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**24. Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

**25. Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, and local Ordinances, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**26. Indemnification**

The Contractor shall hold the City and its employees harmless and shall indemnify the City and its employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the City, its officers or employees.

**27. New Mexico Tort Claims Act**

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

**28. Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-2. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**29. Limitation of Liability**

The Contractor's liability to the City, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the City's, claim. The foregoing limitation does not apply to paragraph 27 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

**30. Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any City response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the City; and (5) the Contractor's response to the request for proposals.

**31. Workers' Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

**32. Inspection**

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

**33. Inspection of Services**

If this Agreement is for the purchase of services, the following terms shall apply.

**A.** Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

**B.** The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City and for as long thereafter as the Agreement requires. The City has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The City shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

**C.** If the City performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

**D.** If any part of the services do not conform with the requirements of this Agreement, the City may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the City may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the Agreement price to reflect the reduced value of the services performed.

**E.** If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the City may:

- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such service; or
- (2) terminate the Agreement for default.

**34. Insurance**

If the services contemplated under this Agreement will be performed on or in City facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

**A. Commercial General Liability** insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

**B. Broader Coverage and Limits.** The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

**C.** Contractor shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

**35. Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

**36. Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**37. Enforcement of Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**38. Patent, Copyright and Trade Secret Indemnification**

**A.** The Contractor shall defend, at its own expense, the City against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark in

the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the City shall:

- 1) give the Contractor prompt written notice within 48 hours of any claim;
- 2) allow the Contractor to control the defense of settlement of the claim; and
- 3) cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

**B.** If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- 1) provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
- 2) replace or modify the product or service so that it becomes non-infringing;

or,

- 3) accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

### **39. Survival**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

### **40. Disclosure Regarding Responsibility**

**A.** Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any City for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.

**B.** Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

**C.** The Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

**D.** A disclosure that any of the items in this requirement exist will not necessarily

result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the City. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the City may terminate the involved contract for cause. Still further the City may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the City.

**41. Suspension, Delay or Interruption of Work**

The City may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the City may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

**42. Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the City:  
Paul F. Heerbrandt, P.E., Engineer Supervisor  
73 Paseo Real  
Santa Fe, NM 87507

pfheerbrandt@santafenm.gov

To the Contractor:

Andrew Sisneros  
18 La Luna Rd  
Santa Fe, NM 87507-4312  
andrew@cnsf.net

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph. The carrier for mail delivery and notices shall be the agent of the sender.

**43. Succession**


This Agreement shall extend to and be binding upon the successors and assigns of the parties.

**44. Performance Bond**

A one hundred percent (100%) performance bond and a one hundred percent (100%) payment and material bond executed by a surety company authorized to do business in the State of New Mexico will be required of the Contractor prior to each project over twenty-five thousand dollars (\$25,000). Said bonds must be provided to Wastewater within ten (10) days of the request for the bonds. Failure to comply shall result in the order being issued to another vendor and the difference in the cost being charged back to the awarded Contractor.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

CITY OF SANTA FE:

  
Alan Webber (Jan 11, 2024 20:52 MST)  
ALAN WEBBER, MAYOR

DATE: Jan 11, 2024

CONTRACTOR:  
A.A.C Construction, LLC

  
NAME: Andrew Sisneros

Managing member  
TITLE

DATE: 10.26.2023  
CRS# 03-157349-00-5  
Registration # 222939

ATTEST:

*GC*  
Geraldyn Cardenas (Jan 12, 2024 09:19 MST)

GERALYN CARDENAS, INTERIM CITY CLERK  
GB MTG 01/10/2024 *XIV*

CITY ATTORNEY'S OFFICE:

*Marcos Martinez*  
Marcos Martinez (Jan 12, 2024 09:19 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

*Emily K. Oster*  
Emily K. Oster (Dec 25, 2023 17:45 MST)

EMILY OSTER, FINANCE DIRECTOR  
5000375/572970

Org. Name/Org.#